

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941- BB

RIO CHAMA STREAM SYSTEM

MOTION TO EXCLUDE ADDITIONAL EVIDENCE

The State of New Mexico *ex rel.* State Engineer (“State”), by and through the undersigned counsel, respectfully requests the Court to exclude from consideration the evidence presented in *pro se* party Eloy J. Garcia’s *Memorandum: Information for this Honorable Court’s Deeper Understanding of Parciente Pro Se Party Eloy Garcia* (Subfile No. 285, Doc. No. 3974.15; Doc 9700, Filed 4/28/2010 at 3), (“*Memorandum*”) (Doc. No. 9909) filed June 23, 2010, for the reasons presented below.

1. On June 25, 2010, the Court granted the *State of New Mexico’s Motion to Limit Review to Evidence Presented to Special Master at Hearings on Disputed Priorities of Acequias de Chamita, Hernandez and Los Salazares* (“*Motion*”) (Doc. No. 9683) filed April 19, 2010, in its *Memorandum Opinion and Order* (“*Order*”) (Doc. No. 9910). The Court held that it “will limit its review of the objections to the Special Master’s Report to the evidence and testimony presented to the Special Master at the hearings on the disputed priorities in August 1996.” *Order*, p. 3.

2. The *Memorandum* states that it is providing “further background information on *pro se* parciente and defendant Eloy Garcia . . . for the Honorable Court’s record and consideration.” *Memorandum*, p. 1. The *Memorandum* purports to contain “Genealogical Evidence and San Gabriel Settlement and Familial History.” *Memorandum*, pp. 3-4.

3. To the extent that defendant Eloy J. Garcia is offering evidence in the *Memorandum* for the Court to consider in support of his *Objections to the Assignment of a 1600 Priority Date to the Concerned Water Rights of the Parcientes of the Acequia de Chamita* (Doc. No. 9590), filed February 16, 2010, and the *Joint Amended Objections* (Doc. No. 9657), filed March 31, 2010, it should be excluded. As the State noted in its *Motion*, Eloy J. Garcia had the right “to participate at the hearings on the disputed priorities of the three Acequias, call witnesses, present evidence and take any position whatsoever with respect to the priorities of the ditches involved.” *Motion*, p. 4. Mr. Garcia did not present this evidence then, and does not offer any justification for not offering it at the hearing. There is also no showing that the additional material was not readily available at the time of the hearing, is newly discovered evidence, or could not have been discovered with the exercise of due diligence. *See Order* pp. 2-3. The Court should therefore exclude this additional testimony.

WHEREFORE the State respectfully requests the Court to exclude from consideration the evidence presented in *pro se* party Eloy J. Garcia’s *Memorandum* as evidence beyond the scope of this Court’s review.

Respectfully submitted,

/s/ Arianne Singer
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2010 I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Arianne Singer